

QUESTION 3

Poor Mildred and Barney. This is an issue of what warranties were provided and whether they are allowed to be disclaimed, and if they are allowed to be disclaimed whether they were properly disclaimed. There seem to be three different warranties that Wally of Wally World's provided: an express warranty, an implied warranty of merchantability, and a warrant for fitness for a particular use (F2P2).

I. Express Warranty

There are three ways express warranties are created according to UCC §2-313(1), (a) any affirmation of fact or promise made by the S to the B, which relates to the goods, and is the basis of the bargain; (b) any description of the goods which is made part of the basis of the bargain; and (c) any sample or model which is part of the basis of the bargain. Subsection (2) states that the S is not required to use formal words in order to create an express warranty.

Here, Wally made the statement and assurance that the vehicle was "safe." Furthermore, it was the basis of the bargain because Barney stated that he needed a used van that was specifically safe for lifting his wife's wheelchair. However, Subsection (2) goes on to state that "a statement purporting to merely the seller's opinion of commendation of the goods does not create a warranty." Wally might argue that it was just his opinion that he was giving. *basis of bargain?*

Shift gears [Yet, Comment 4 provides the way to analysis whether a disclaimer of an express warranty should be upheld. Comment 4 states that "a clause generally disclaiming 'all warranties, express or implied' cannot reduce the seller's obligations with respect to such description..." And goes on to state that "in determining what the parties have agreed [upon] good faith is a factor and consideration should be given to the fact that probability is small that a real price is intended to be exchanged for a pseudo-obligation." Here, Wally seems to be taking *indeed he did...*

advantage of the fact that grandpa Barney is old. As Comment 4 suggests, it is unlikely that Barney would expressly state that he is looking for a safe van, and then agree to buy a van that had no guarantees of being safe.

The trouble Barney might have is under UCC §2-316(1), where express warranties and words or conduct tending to negate or limit the warranty are “construed where reasonable as consistent with each other, but (subject to the provisions of this Article on parol or extrinsic evidence.)” Here, Wally is likely to argue that the K was the final expression of the terms, and if the court finds this to be true, then extrinsic evidence can only be allowed in to explain or supplement the K. It is unlikely that the evidence that Wally said that the van would be safe would be allowed in because it is not explaining or supplementing; instead it is contradicting the terms of the agreement.

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Therefore, it is likely that, our client, Barney might be successful is suing for breach of express warranty, but does run up against the trouble of the extrinsic evidence being excluded because of the parol evidence rule.

II. Implied Warranty of Merchantability

UCC §2-314(1) states that “unless excluded or modified, a warranty that the goods shall be merchantable is implied...if the seller is a merchant with respect to goods of that kind.” Subsection (2), states that in order for goods to be merchantable, the minimum, they are (c) “fit for the ordinary purposes for which such goods are used...”

In order for there to be an implied warranty of merchantability we must first determine whether Wally is a merchant. Comment 3 assists with determining this, “a contract for the sale of second-hand goods, however, involves only such obligation as is appropriate to such goods for that is there contract description.” However, Comment 3 goes on to say that under the obligation

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of good faith, if the seller knows of material defects then the seller must fully disclose. Here, there are no facts provided that Wally knew of the failure, which would definitely help our case if Wally had known about the failure. good

Wally is likely to be a merchant because this is not an isolated sale; instead his company specializes in making these types of adaptations to homes, vehicles, etc. especially for wheelchair users. However, Wally is likely to argue that he successfully disclaimed the implied warranty of merchantability. services?

In order to be successful in his claim, Wally must have followed the guidelines under §2-316(2), "subjection to subsection (3), to exclude or modify the implied warranty of merchantability...the language must mention merchantability and in case of a writing must be conspicuous..." From the facts provided, Wally did mention merchantability in the disclaimer and the warranty is conspicuous from the fact that it is written in capital letters definition? Comment 1 states that the purpose is to protect the buyer from surprise. We are not provided with information regarding where the warranty is located in the K, but if it was located in the beginning or end then it will be considered to be conspicuous, and it really is not Wally's fault that Barney did not bring his glasses.

In addition, Wally covered all bases by also including the statement that "the van is sold as is." Under UCC §2-316(3)(a), "notwithstanding subsection (2), unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is"... which in common understanding calls the buyer's attention to the exclusion of warranties..." Therefore, it is unlikely that Barney will succeed in a suit of breach of implied warranty of merchantability because Wally successfully ~~disclaims~~^{ed} the warranty.

III. Warranty of Fitness for a Particular Purpose (F2P2)

UCC §2-315, at the time of K'ing if there S has reason to know "any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods," there is an implied warranty that the goods are fit for that particular purpose. However, the implied warranty can be disclaimed.

Here, Wally did create an F2P2 because Wally knew that Barney wanted to purchase a van that had a lift that could lift his wife's wheelchair. Wally also knew that B's wife was fragile and that B wanted the van to be particularly safe. In addition, Wally could likely see that B was an old man himself and likely would be relying on Wally to provide his assistance and knowledge. There was also the knowledge of the particular purpose, of course a van is used for driving places, but Wally knew there was an additional purpose for this van. Wally knew that the van had to be safe in order to transport a person in a wheelchair. Therefore, there was an implied F2P2 that was created.

is it a 'particular' purpose (in contrast to an 'ordinary' purpose)?

In order to disclaim the warranty, Wally needed to follow §2-316(2), "to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous."

Unlike IWOM, F2P2 does not need to use specific language, but it needs to be in writing. The code section goes on to give the example, "language is sufficient if it states...that 'there are no warranties which extend beyond the description on the face hereof.'" Here, Wally does have the provision, in writing, that "all warranties are disclaimed." According to the code section, this seems to be a valid disclaimer of the implied warranty of F2P2.

IV. Conclusion/Damages

Where does this leave Barney and Mildred? Well, it seems that they do not have a good case against Wally for IWOM or F2P2. However, Wally did seem to make an express warranty to Barney. Yet, Wally is likely to argue that he also had a clause in the K stating that he is not liable for any damages. Sadly for Wally, the UCC does encourage the freedom to K and to limit remedies (as stated in §2-316(4)); however, the UCC does draw the line at some point. According to the UCC that point arises when a party tries to limit damages for injury to a person. UCC §2-719(3) states that "limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable..." Therefore, Barney and Mildred will be able to recover any damages suffered to Mildred (but the facts state she narrowly escaped injury).

as well as the fact to advise freedom K.

However, §2-719(3) also states that "consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable." Here, we can argue that it is unconscionable to exclude all remedies because then B does not even have "at least minimum adequate remedies" (as stated are required in Comment 1). Therefore, it is likely that B will receive the \$5K back, minus the \$1,200 that he got when selling the van on eBay. Whether or not they receive the \$2,300 for the wheelchair repair might be more difficult, because Wally might argue that this is not personal injury and therefore this part is not unconscionable to K around.

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At least B will receive some money back for the trauma that him and his wife had to go through. I would also inform B that next time it is imperative to take his reading glasses and read the entirety of the K!